

IN THE GRAND COURT OF THE CAYMAN ISLAND

CAUSE NO. 186 of 2007

**BETWEEN:** CAYTECH ELECTRONICS LTD FIRST PLAINTIFF  
**AND :** MARCELO FRANCA SECOND PLAINTIFF  
**AND;** SJR INVESTMENTS LIMITED FIRST DEFENDANT  
**AND:** SIMON ROBshaw SECOND DEFENDANT

**WRIT OF SUMMONS**

**TO;** SJR Invstments Limited  
c/o Corpserve Limited  
40, Linwood Street  
P O Box 2503  
Grand Cayman

**AND TO:** Simon Robshaw  
South Sound (first large house as you enter  
South Sound coming from Grand Harbour)  
George Town



**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service you must either satisfy the claim or return to the Court office, P O Box 495 G, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and Judgement may be entered against you forthwith without further notice.

Issued this 2<sup>nd</sup> day of May, 2007.

**NOTE:** This Writ may not be served later than 4 calendar months beginning with the date of the issue unless renewed by Order of the Court.

**IMPORTANT**

Directions for Acknowledgement of Service are given with the accompanying form

**STATEMENT OF CLAIM**

1 The First Plaintiff is a local company which was incorporated in the Cayman Islands on 26th June, 2006 whose Memorandum of Association empowers it with unrestricted objects. Since its incorporation it has inter alia conducted the business of selling electronic equipment and related goods and at the material time, it entered into a written Shareholders' Agreement, a written Loan Agreement, a written Deed of Guarantee and a written Debenture with the First Defendant. The First Plaintiff is in possession of a Trade & Business License to carry on the said business in the Cayman Islands.

2 The Second Plaintiff was the principal and owner of a business known as Cay Tech Electronics, prior to its incorporation, which business was incorporated on 26th June, 2006 and styled "Cay Tech Electronics Ltd" (which is the first Plaintiff in this matter) with the Second Plaintiff being its sole Director. The Second Plaintiff is of Brazilian extraction but is the holder of Caymanian Status and was appointed the Manager of the First Plaintiff in the Shareholders' Agreement.

3 The First Defendant is an exempt company which was incorporated in the Cayman Islands on 26th June, 2006 whose Memorandum of Association empowers it with unrestricted objects. By law, the said corporation is only allowed to conduct ancillary business on the Cayman Islands, as its main business must be located offshore. It is a 40% shareholder in the First Plaintiff and at the material time, it entered into a written Shareholders' Agreement, a written Loan Agreement, a written Deed of Guarantee and a written Debenture with the First Plaintiff. The First Defendant has no Trade & Business License to carry on business in the Cayman Islands and is not eligible, by law, to apply for or be granted such license.

4 The Second Defendant is the sole Director/Shareholder of the First Defendant and is a United Kingdom national, without Caymanian Status and at the material time he signed off on all of the Agreements referred to above on behalf of the First Defendant

3 The Debenture Agreement at paragraph 10 defines certain "Events of Default" and further provides inter alia that "Notwithstanding any other provisions of this Debenture, the Principal Sum, Interest and all other moneys payable hereunder shall become immediately owing and payable and the first floating security hereby created shall become fixed and all unpaid Interest and any other moneys secured hereby or by any collateral or additional charges or securities hereto shall become immediately owing and payable in the following events". It then goes on to note 14 conditions of default and provides for the Lender to appoint a Receiver in the event of Default.

4 Pursuant to a letter dated 29th March, 2007 the Defendants' attorneys notified the Plaintiffs' attorneys that they considered that there had been a breach of the Debenture Agreement (not an Event of Default) inter alia on the basis that a sum of , "at least US\$218,000.00 is missing from the company accounts.....there is documentary evidence in the form of sale proceeds, purchase orders and bank records showing that the above sum is missing from the company's account" , and further indicating that they "have evidence that Mr Franca, without the written consent of our client, took charged goods out of the Cayman Islands to sell in Brazil." and on this basis the Defendants were at liberty to appoint a Receiver and specifically stating that "It is anticipated that the receivers will issue proceedings against Mr Franco in relation to the missing US\$218,000.00."

5 The said letter went on to state that "to avoid the appointment of the receiver and the possible institution of civil proceedings against Mr Franca, our client is prepared to forego the appointment of the Receiver if Mr Franca is prepared to transfer his 60% ownership of the shares of Cay Tech Electronics Ltd. to a third party nominated by our client". The said letter then goes on to state that if the Plaintiffs fail to respond to the above offer by 3pm the following day then the Receiver would be appointed forthwith.

6 The said letter was not received by the Defendants' attorneys until after the deadline set in the letter due to Court commitments, and Mr Ken Krys of RSM was appointed as a Receiver of the Company on 30th March, 2007 purportedly in accordance with the content of this letter.

7 On Saturday 31st April, 2007 whilst the Second Plaintiff, who was also appointed Manager of the First Defendant by the Shareholders' Agreement, was at work , during normal office hours, the purported Receiver entered the premises and commenced what he regarded as his duties. The Second Plaintiff being unable to contact his attorney contacted the Royal Cayman Islands Police for assistance and it was subsequently agreed that the business should be closed until Monday, 2nd April, 2007, which it was. The Plaintiffs will rely on the said letter and other correspondence relating to this matter for its full terms and legal effect.

8 Subsequently, despite many requests to produce same no credible documentation has been presented by the Defendants to confirm that indeed US\$218,000.00 "is missing from the company" and only two affidavits from purported employees of the company have been provided to state that the Second Plaintiff "told me that he was taking" items from the store off Island have been produced. Both of these affidavits were obtained subsequent to the purported appointment of the Receiver. One of these purported employees claims that he was employed at the First Plaintiff prior to its existence, in

January, 2006 and neither of the purported witnesses state that they saw the Second Plaintiff take the items out of the jurisdiction nor indeed do they say that they saw him take the items out of the store where the First Plaintiff is located.

9 Subsequently and after the date of appointment of the purported Receiver, the Defendants have sought various alternative reasons based on alternative clauses in the Debenture to justify the appointment of the purported Receiver. The Plaintiffs will rely on the relevant correspondence between the respective attorneys in this regard.

10 In an effort to compromise, the Plaintiffs agreed that the purported Receiver should be converted to 'auditors' in line with the Articles of Association of the First Plaintiff, so that the First Plaintiff would be subjected to a full audit and a proper report on its financial affairs be produced. The Defendants have refused to accept this.

11 On 5th April, 2007 the Second Plaintiff on behalf of the First Plaintiff sent out a "Notice of Special Meeting" of the company in accordance and with its Articles of Association to be held at the company's registered office, indicating a proposed Agenda.

12 The Defendants neglected and/or failed to turn up at the meeting so by virtue of the company's Articles of Association the meeting stood adjourned until the following week on the same day, at the same time and at the same place.

13 The meeting was therefore adjourned until Friday, 27th April, 2007. The Defendants again neglected to attend the adjourned Meeting, so that in accordance with the First Plaintiff's Articles of Association, the meeting was still held and a Resolution was passed inter alia appointing auditors to audit the First Plaintiff, and PriceWaterhouse Coopers have agreed to so act.

14 Since the purported appointment of the Receiver, the Second Plaintiff has also received no salary for the months of March and April, 2007. At the said meeting it was also resolved that the Second Plaintiff should continue to be paid a salary of CI\$2,500.00 fortnightly.

15 On 1st April, 2007 the Plaintiffs' Attorney received an email communication from the purported Receiver whereby it is proposed to sell most of the inventory of the First Plaintiff's Grand Harbour location at a price of CI\$133,480.00 to the Second Defendant by close of business on Thursday 3rd May, 2007.

16 No proper report has been forthcoming from the purported Receiver as to the financial status of the First Plaintiff nor for the basis on which he has arrived at this figure to sell the company's assets as no account has been taken of the items which are owned by the First Plaintiff that have been taken from its' premises by the Second Defendant to his private home, nor of the other items which he has "stored" at his private home nor of the payments already made by the First Plaintiff to the Defendants on the debt outstanding to the Defendants

17 As a result of the actions of the Defendants and/or their agents or servants the Plaintiffs have suffered loss and damage and will continue to suffer loss and damage.

### **WHEREFORE THE PLAINTIFF CLAIMS**

((a) A Declaration that the appointment of the purported Receiver is null an void. and/or that it be postponed pending the outcome of the relief sought in paragraph (b).


(b) An order that an auditor and/or Inspector of the First Plaintiff be appointed to ascertain its true financial position and that a Report be provided to the Shareholders.

(c) A Declaration that the Second Plaintiff is entitled to continue to receive his remuneration as Manager of the retail shop owned by the First Plaintiff. pending the outcome of the relief sought in paragraph (b)

(d) An injunctioin restraining the Defendants whether by themselves, their servants or agents or otherwise from transferring, selling, removing, districuting and/or otherwise dispsing of the assets of the Frist Plaintiff pending the outcome of the relief sought in paragraph (b).

(e) Damages, Costs and Attorneys fees

Dated this 2<sup>nd</sup> day of May, 2007.


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**BROOKS & BROOKS**  
 Attorneys At Law for the Plaintiff

**THIS WRIT OF SUMMONS** was filed by Brooks & Brooks Attorneys At Law for and on behalf of the Plaintiffs herein whose address for service is that of his said Attorneys At Law One, Artillery Court , P O Box 1355GT GRAND CAYMAN

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AND: MARCELO FRANCO SECOND PLAINTIFF  
AND; SJR INVESTMENTS LTD FIRST DEFENDANT  
AND: SIMON ROBshaw SECOND DEFENDANT

ACKNOWLEDGEMENT OF SERVICE OF AMENDED WRIT OF SUMMONS

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED

Delay may result in judgement being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the sevice of the Writ is being acknowledged:

2 State whether the Defendant intends to contest the proceedings (Tick appropriate box)

Yes

No

If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings , state if the Defendant intends to apply for a stay of execution against any judgement entered by the Plaintiff( Please tick box)

Yes

No

Service of Writ is acknowledged accordingly

Signed \_\_\_\_\_

Please complete oveleaf

(Attorney) for

(Defendant in Person)

Address for service:

Notes on Address for Service

Attorney: where the Defendant is represented by an attorney state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in Person: where the Defendant is acting in person, he must give his post office box and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by the Plaintiff's Attorney (or by the plaintiff if suing in person) of his name, address and residence, if any in the box below

**Brooks & Brooks  
Attorneys At Law  
P O Box 1355 GT  
GRAND CAYMAN**

**(One, Artillery Court, George Town, Grand Cayman)**

Indorsement by the defendant's attorney (or by the defendant if suing in person) of his name, address and residence, if any in the box below